No. 218.

MOSES B. IVES, PLAINTIFF IN ERROR,

vs.

THE MERCHANTS' BANK OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	3	2
Assignment of errors	6	3
Writ and marshal's return	9	4
Declaration	11	5
Amended declaration	12	6
Defendants' plea and points of defence	23	11
Demurrer of defendants	25	13
Agreed statement of facts	26	13
Judgment	32	16
Appeal granted	33	17
Appeal bond	33	17
Clerk's certificate	34	18

GIDEON, Printer.

UNITED STATES, &c.

The President of the United States, to the judges of the circuit court of the United States, holden in and for the Rhode Island district, greeting:

[L. S.]

Because that, in the record and process, and also in the rendering of judgment in a suit before you or some of you, between the President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massachusetts, and located and transacting business in the city of Boston, in the county of Suffolk, and district of Massachusetts, and composed of citizens of the State of Massachusetts, plaintiffs, and Moses B. Ives, of the city and county of Providence, and district of Rhode Island, and a citizen of the State of Rhode Island and Providence Plantations, defendant, in an action of debt; a manifest error has intervened to the great damage of the defendant, as has in his complaint been stated.

And it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf. You are hereby commanded, that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the hon. Roger B. Taney, our chief justice of the said Supreme Court, this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-second.

JOHN T. PITMAN, *Clerk.*

June 25th, 1849. Allowed. JOHN PITMAN,
District Judge, U. S., for R. I. dist.

RHODE ISLAND DISTRICT, &c.

[L. S.]

The President of the United States of America, to the marshal of said district, or to his deputy, greeting:

You are hereby required to make known to "the President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massachusetts, and located and transacting business in the city of Boston, in the county of Suffolk, and district of Massachusetts, and composed of citi-

...cir... ...Island dis... ...Ives, of the city and ...Island, and a citizen of the ...Rhode Island, was defendant; the said defendant has appealed from a judgment of the said circuit court, rendered against him in said cause, at the June term, A. D. 1849, thereof, holden at Newport, within and for the district of Rhode Island, on the fifteenth day of June, A. D. 1849, unto the Supreme Court of the United States, next to be holden at Washington, within and for the said United States, on the first Monday of December, A. D. 1849, which appeal has been duly allowed; and that they, the said President, Directors, and Company of the Merchants' Bank of Boston, then and there be before the said Supreme Court, to hear the proceedings on the said appeal, if it shall seem expedient unto them, and further to do and receive what in the said Supreme Court shall be ordered, adjudged, and decreed in this behalf. And make due return of this citation, with your doings thereon.

In witness whereof I have caused the seal of the said circuit court to be hereunto affixed, and have subscribed these presents this eighth day of October, A. D. 1849.

JOHN PITMAN,
District Judge, U. S., for R. I. district.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

October 27th, 1849. Made service of the within citation by leaving a true and attested copy hereof with Franklin Hivens, president, Samuel Hooper, Samuel Henshaw, Israel Whitney, John B. Jones, William P. Winchester, N. F. Cunningham, David Henshaw, Edward Brooks, James R. Mills, and Luke Fay, directors of the Merchants' Bank of Boston, as commanded.

Fees:

11 services - - - -	$22 00
11 copies - - - -	5 50
45 miles travel - - -	4 50
	$32 00

GEORGE W. JACKSON,
U. S. Marshal.

UNITED STATES OF AMERICA:

Supreme Court.

MOSES B. IVES, plaintiff in error,
vs.
MERCHANTS' BANK OF BOSTON.

Assignment of errors.

...on judgment of the circuit court of the United States for the Rhode Island district, rendered against him at the June term of said

court,
tiff, and
prays that a writ of error
Supreme Court of the United
the District of Columbia, and assigns for error to the record of said
tion the following reasons:

First. That said judgment is erroneous in this, to wit, that the same was rendered for the defendant in error, whereas the plaintiff in error was entitled in law upon said record to have and recover his costs in said action.

Second. That said judgment was rendered against the plaintiff in error in said action for the sum of twenty-five hundred dollars, with interest from the tenth day of October, A. D. 1848; whereas as appears from said record it should have been for a much less sum, to wit, the sum of dollars, and interest from October 10, 1848.

Third. That said judgment was rendered against the plaintiff for more than the penalty of the bond on which he was sued in said action.

Fourth. That said judgment is contrary to law; whereupon the said Moses B. Ives prays that the judgment aforesaid for the errors aforesaid, and other errors in said record and proceedings, may be revoked and annulled; and that such judgment may be rendered in said action and order of proceedings had as to law may appertain.

MOSES B. IVES,
By SAMUEL RIVES,
His attorney.

At a circuit court of the United States, for the first circuit, begun and holden at Newport, within and for the Rhode Island district, on the fifteenth day of June, A. D. 1849:

Present, the hon. Levi Woodbury, associate justice Supreme Court, United States; hon. John Pitman, U. S. district judge, for Rhode Island district; James M. Clarke, esq., U. S. dist. attorney, for Rhode Island district; George W. Jackson, U. S. marshal, for Rhode Island district; John T. Pitman, clerk.

Be it remembered, that at the November term of said court, A. D. 1848, the following writ and declaration were filed:

Writ.

RHODE ISLAND DISTRICT, *sc*:

The President of the United States of America, to the marshal of said
[L. S.] district, or to his deputy, greeting:

We command you to summon Moses B. Ives, of the city and county of Providence, in the district aforesaid, merchant, and a citizen of the State of Rhode Island and Providence Plantations, if he may be found in your district, to answer the complaint of the President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massa-

...composed of ... circuit court to be ... Rhode Island district, on the ... day of November next, counting the date hereof, in an action of debt to recover a sum of money due to the plaintiffs by bond, which the defendant justly owes the plaintiffs, and refuses to pay, as by the declaration to be filed in court will be fully set forth, to the damage of the plaintiffs seven thousand dollars. Hereof fail not, and make true return of this writ, with your doings thereon.

Witness the hon. Roger B. Taney, our chief justice at Providence, this 10th day of October, anno domini 1848.

JOHN T. PITMAN, *Clerk.*
RICHARD WARD GREENE,
Surety for costs and att'y to pl'ffs.

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island district, sc.:

PROVIDENCE, *October* 10, 1848.

Made service of the within writ, by leaving a true and attested copy hereof at the last and usual place of abode of the within named defendant as commanded.

B. ANTHONY,
U. S. marshal, R. I. district.

Fees—Service	$2	00,
Copy		50,
Travel		10,
	$2	60

Declaration.

DISTRICT OF RHODE ISLAND, ss.

Circuit court of United States, November term, A. D. 1848.

The President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massachusetts, and located and transacting business in the city of Boston, in the county of Suffolk, and district of Massachusetts, and composed of citizens of the State of Massachusetts, complain of Moses B. Ives, of the city and county of Providence, and district of Rhode Island, and a citizen of the State of Rhode Island and Providence Plantations, duly summoned by the marshal in an action of debt, for that the said defendant, at said city of Providence, on the 14th day of December, A. D. 1843, by his certain writing obligatory of that date, sealed with his seal, and here in court ready to be produced, bound and acknowledged himself to be justly indebted to the plaintiffs in the full and just sum of[t] twenty-five hundred dollars, to be paid to the plaintiffs on demand, whereby the

said defen[illegible]
ought to pay th[illegible]
quested, said defendant h[illegible]
part thereof, but still owes the [illegible]
plaintiffs, to the plaintiffs' damage seven thou[illegible] dollars, as laid in the
writ, dated the 10th day of October, A. D. 1848.

Wherefore they sue by their attorney,

R. W. GREENE.

And at said November term, the parties had leave to amend the pleadings; whereupon the following amended declaration was filed:

Amended declaration.

DISTRICT OF RHODE ISLAND, ss.

Circuit court of United States, November term, A. D. 1848.

The President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massachusetts, and located and transacting business in the city of Boston, in the county of Suffolk, and district of Massachusetts, and composed of the citizens of the State of Massachusetts, complain of Moses B. Ives, of the city and county of Providence and district of Rhode Island, and a citizen of the State of Rhode Island and Providence Plantations, duly summoned by the marshal in an action of debt, that he render to the plaintiffs the sum of twenty-five hundred dollars and interest, which he owes to, and unjustly detains from, them.

For that heretofore, a suit in admiralty for a cause of bailment, civil and maritime, was pending in the circuit court of the United States, for the district of Rhode Island, at the November term thereof, A. D. eighteen hundred and forty-three, in which suit the said President, Directors, and Company of the Merchants' Bank were libellants, and the New Jersey Steam Navigation Company, a corporation duly incorporated by the legislature of the State of New Jersey, were respondents; in which suit the steamer Massachusetts, her tackle, apparel, furniture, and boats, belonging to said respondents, were attached on a warrant issued in due form of law therein and at said November term; and on the ninth day of said term, said court rendered a decree therein, that the said libellants have and recover of the said respondents the sum of twenty-two thousand two hundred and twenty-four dollars, and costs of suit, and that execution issue therefor, according to the course of the court. From which decree the said respondents, at said November term, and in open court, appealed to the Supreme Court of the United States, which appeal was duly allowed by said circuit court, by their order at said November term, upon a bond being executed to the satisfaction of the United States district judge for said Rhode Island district, within ten days thereafter, in the penal sum of twenty-five hundred dollars, and conditioned for the payment of damages and costs on the appeal.

And thereupon, and in compliance with the said order of said circuit

of Providence, made and executed sealed with his seal, and which the plaintiffs have in court ready to be produced, by which the said defendant bound and acknowledged himself to be justly indebted to the plaintiffs in the full and just sum of twenty-five hundred dollars, to be paid to the plaintiffs on demand; to which writing obligatory was annexed the following condition, to wit, "whereas, at the November term of the circuit court of the United States for the first circuit, begun and holden at Providence, within and for the Rhode Island district, on the tenth day of March, 1843, a final decree was rendered and pronounced by said court in a cause in admiralty in said court pending, wherein the Merchants' Bank of Boston, a corporation incorporated by the legislature of the Commonwealth of Massachusetts, were libellants, and the New Jersey Steam Navigation Company, a corporation incorporated by the legislature of the State of New Jersey, were respondents. From which decree the said New Jersey Steam Navigation Company have appealed to the Supreme Court of the United States, next to be holden at Washington on the second Monday of January next.

Now, therefore, if the said New Jersey Steam Navigation Company shall prosecute their said appeal before the said Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation to be void and of no effect, otherwise it shall remain in full force and effect. And the plaintiffs aver, that at the time of the commencement of said suit, and from thence continually, until long after the date and execution of said writing obligatory, the said defendant was a stockholder in, and member of, said New Jersey Navigation Company.

Whereupon, on the said fourteenth day of December, A. D. 1843, the district judge approved said bond, and allowed said appeal; and the plaintiffs aver, that the said New Jersey Steam Navigation Company duly entered their said appeal in said suit, at the January term, A. D. 1844, of said Supreme Court; and that thereupon such proceedings were had therein by said court that, at the December term thereof, A. D. eighteen hundred and forty-seven, a decree was rendered by said court in said suit, in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the district of Rhode Island, greeting:

Whereas, lately, in the circuit court of the United States for the district of Rhode Island, before you, or some of you, in a cause between the President, Directors, and Company of the Merchants' Bank of Boston, libellants, and the New Jersey Steam Navigation Company,

respon...
words follow...

Whereupon it is ordered ... lants have and recover of the ... thousand two hundred and twenty-four dollars ... costs of suit; and that execution issue therefor, according to the course of the court, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and forty-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is now here ordered and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs and damages at the rate of six (6) per centum per annum, and that the said libellants recover against the said respondents one hundred and fifty dollars and fifty-two cents for their costs herein expended, and have execution therefor:

You therefore are hereby commanded, that such execution and proceedings be had in said cause, as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the hon. Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-seven.

That a mandate, in due form of law, bearing date , issued from said Supreme Court, directed to said circuit court, and commanding said circuit court to enter a decree in said suit in conformity to the decree of said Supreme Court. That thereupon, at the June term, A. D. 1848, of said circuit court, said mandate was exhibited to said circuit court, and placed on the files thereof. And at the same term of said circuit court, and on the day of said term, being the day of June, A. D. 1848, the said circuit court entered a decree in the words and figures following:

United States circuit court, June term, A. D. 1848.

RHODE ISLAND DISTRICT, *ss.*

In Admiralty.

The PRESIDENT, DIRECTORS, and COMPANY of the Merchants' Bank of Boston, libellants, against The NEW JERSEY STEAM NAVIGATION COMPANY, respondents.

Whereas, at the November term, A. D. eighteen hundred and forty-

...o was
...; that the said libel-
... the sum of twenty-two
... dollars, and costs of suit, and
... execution issue therefor, according to the course of the court;" from which decree the said New Jersey Steam Navigation Company appealed to the Supreme Court of the United States, and entered their appeal in said Supreme Court:

And whereas, at the December term, A. D. eighteen hundred and forty-seven, of said Supreme Court, said court ordered and decreed as follows, to wit:

"On consideration whereof it is now here ordered and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs and damages at the rate of six (6) per centum per annum; and that the said libellants recover against the said respondents one hundred and fifty dollars and fifty-two cents for their costs herein expended, and have execution therefor, as appears from the mandate of said Supreme Court, now on file in this court:

Whereupon it is ordered and decreed by this court, upon motion of the libellants' counsel, that the said libellants have and recover of the said respondents the said sum of twenty-two thousand two hundred and twenty-four dollars, and also the sum of six thousand and seventy-eight dollars and twenty-six cents, being the damages, at the rate of six (6) per centum per annum, decreed by the said decree of said Supreme Court; and the said sum of one hundred and fifty dollars and fifty-two cents, for their costs of suit expended in said Supreme Court, making in all the sum of twenty-eight thousand four hundred and fifty-two dollars and seventy-eight cents; and that execution issue therefor according to the course of the court.

It is also ordered and decreed, that the libellants have and recover of the respondents their costs of suit in this court and in the district court, and that execution issue therefor, according to the course of the court.

And the plaintiffs further aver, that the damages decreed by said Supreme Court on said appeal amount to the sum of six thousand and seventy-eight dollars and twenty-six cents, and the costs on the said appeal amount to the sum of one hundred and fifty dollars and fifty-two cents; making, in all, the sum of sixty-two hundred and twenty-eight dollars and seventy-eight cents.

And upon said decree and judgment, execution, in due form of law, under the seal of said court, and bearing date the twenty-sixth day of June, A. D. 1848, was issued from the clerk's office of said court, directed to the marshal of said district, or his deputy, commanding him or them that, of the goods and chattels of the New Jersey Steam Navigation Company, they cause to be levied and paid to the said President, Directors, and Company of the Merchants' Bank, said sums, being in all the sum of twenty-eight thousand three hundred and two dollars and twenty-six cents, and interest thereon from June nineteenth, A. D.

1848;
cents; and
And the said
livered to the marshal
thereafterwards, on the sixth
cution on the steamer Massachusetts, together with her tackle, appa
furniture, and boats; said steamer, her tackle, apparel, furniture, and
boats being then found in the harbor of the port of Providence, in said
Rhode Island district.

And thereupon the said marshal advertised, in due form of law, said steamer, her tackle, apparel, furniture, and boats, for sale on said execution; and, on the twenty-sixth day of the same July, sold the same on said execution, in satisfaction thereof, for the sum of twenty-five thousand dollars. And the said sum, deducting therefrom the sum of eight hundred and eighty-three dollars and thirty-eight cents for marshal's fees and expenses, and , was paid to the libellants, and by them endorsed on said execution in the words and figures following:

"Received, July 26th, 1848, of Burrington Anthony, United States marshal, seven thousand three hundred and thirty-three dollars and thirty-three cents on the within execution, $7,333 33.

"R. W. GREENE,
Attorney to the Merchants' Bank of Boston."

Received, August 1st, 1848, of B. Anthony, esq., marshal, two notes of hand, both signed by Edward C. Weeks, and endorsed by Drew, Robinson & Co.; both dated July 26, 1848, each for the sum of eight thousand three hundred and thirty-three dollars and thirty-three cents; one payable in sixty days and the other in ninety days from the date thereof, with interest; the above notes received on account of the sum of twenty-two thousand two hundred and twenty-four dollars, mentioned in the decree on which said execution issued; said sum of twenty-two thousand two hundred and twenty-four dollars, being a part of the sum for which said decree was rendered; not intending, hereby, in any way to discharge the obligor, or the appeal bond given in the appeal from the U. S. circuit court to the Supreme Court of the United States in this case, from his liability for the full amount of the penalty of said bond and interest.

R. W. GREENE,
Attorney of the Merchants' Bank.

Received, Aug. 4, 1848, of B. Anthony, esq., marshal, one hundred and sixteen dollars and sixty-two cents, being the balance of the amount collected by the marshal, deducting the sum of eight hundred and eighty-three dollars and thirty-eight cents, that being the amount of the marshal's charges and expenses for his bill hereto annexed. The above sum of one hundred and sixteen dollars and 62 cents, received and applied in the same manner and to the same purpose as the two notes receipted for by the within receipt, dated August 1st, 1848.

...by
..., for the
...execution, bearing
... marshal returned said
...four thousand one hundred
... sixteen dollars ..., and unsatisfied for the balance; and also that there were no other goods or chattels belonging to the said New Jersey Steam Navigation company, to be by him found in his district. And the plaintiffs aver that there were not then, and never have been since, any other goods or chattels belonging to said New Jersey Steam Navigation company to be found by the said marshal in said Rhode Island district.

And the plaintiffs further aver, that of the costs and damages decreed by said supreme court on said appeal, the sum of four thousand eight hundred and sixty-six dollars and eighty-nine cents and interest, is still due and unpaid on said execution and interest, by reason of which said breach the said writing obligatory became forfeited, and thereby an action has accrued to the plaintiffs to have and recover of the said defendants said sum of twenty-five hundred dollars, and interest from the date of said bond.

Yet the said defendant, though often requested so to do, has not paid said sum of twenty-five hundred dollars and interest above demanded, but hath hitherto wholly neglected and refused, and still neglects and refuses, to pay the same.

To the plaintiffs' damage seven thousand dollars, as laid in their writ, dated the 10th day of October, A. D. 1848.

Wherefore they sue by their attorney.

R. W. GREENE.

Pleas.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of [the] United States, for Rhode Island district, November term, 1848.

And the said Moses B. Ives comes and defends the wrong and injury, when, &c., and saith that the said writing obligatory is not his deed, and of this he puts himself upon the country, by

SAML. AMES,
His attorney.

Under an agreement between the parties to that effect, the defendant gives notice under the above plea of the general issue of the following points of defence:

1st. That as surety on the appeal bond of the New Jersey Steam Navigation company, he contends that the whole proceeds of the steamer Massachusetts, attached in the suit in admiralty, Merchants' Bank vs. New Jersey Steam Navigation company, and sold on execution in said suit, are to be applied to the payment of all costs and interests, and damages due by way of interest, in the first instance, before any portion of said proceeds are applied to the principal sum found due to said Bank

by said
interest, or
satisfied, and he di

2d. That at all even
bank, over the amount due
pal sum, interest, and cost, by the decree of the circuit court, appealed from by the New Jersey Steam Navigation Company, is to be applied, in the first instance, to the discharge of said surety, as a general payment made by his principal—said company—on account of costs and damages accrued by reason of the appeal, and that to the extent of such surplus his said bond is satisfied.

SAML. AMES,
Attorney for M. B. Ives.

And the said Moses B. Ives comes and defends the wrong and injury, when, &c., and craves oyer of the writing obligatory in the said declaration mentioned, and it is read to him, &c.; and he also craves oyer of the condition of the said writing obligatory, and it is read to him in these words and figures: "The condition of the above obligation is as follows: Whereas, at the November term of the circuit court of the United States, for the first circuit, begun and holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, A. D. 1843, a final decree was rendered and pronounced by said court, in a cause in admiralty in said court pending, wherein the Merchants' Bank of Boston, a corporation incorporated by the Legislature of the Commonwealth of Massachusetts, were libellants, and the New Jersey Steam Navigation Company, a corporation incorporated by the Legislature of the State of New Jersey, were respondents, from which decree the said New Jersey Steam Navigation Company have appealed to the Supreme Court of the United States, next to be holden at Washington on the second Monday of January next. Now, therefore, if the said New Jersey Steam Navigation Company shall prosecute their said appeal before said Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages, as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect."

Which being read and heard, the said Moses B. Ives says, that the plaintiff his action aforesaid thereof against him ought not to have or maintain, because he says that the said New Jersey Steam Navigation Company did prosecute their said appeal before the said Supreme Court of the United States with effect, and have well and truly paid all such costs and damages as were adjudged for them to pay by said Supreme Court or by said circuit court, by reason of said appeal, according to the meaning and effect of said writing obligatory and indenture. And this he is ready to verify; wherefore he prays judgment, if the plaintiff his action aforesaid thereof against him ought to have and maintain, &c.

By SAML. AMES,
His attorney.

the R. I. district, at

1849.

and the said Moses [illegible] defends the wrong and injury, when, &c., and says that the said declaration, and the matter therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Merchants' Bank of Boston to have or maintain their aforesaid action thereof against him, the said Moses B. Ives, and that he, the said Moses B. Ives, is not bound by law to answer the same, and this he is ready to verify.

Wherefore, for want of sufficient declaration in this behalf, the said Moses B. Ives prays judgment, and that the said Merchants' Bank of Boston may be barred from having or maintaining their aforesaid action thereof against him, &c.

By SAML. AMES,
His Attorney.

Agreed statement of facts.

RHODE ISLAND DISTRICT, ss.

Circuit court, U. S., for R. I. district, Nov. term, 1848.

It is agreed between the parties hereto, that the documents, consisting of judgments or decrees, appeal bonds, charter of the New Jersey Steam Navigation Company, processes and officers' returns contained in the printed record of the case, New Jersey Steam Navigation Company vs. the Merchants' Bank of Boston, late pending on appeal in the Supreme Court of the United States, printed for the use of said court, shall be admitted on the trial of this cause as genuine evidence of the contents of said documents, so far as the same may be applicable in said trial; that the libellants' costs, taxed and allowed in said libel, amounted to the sum of seventy dollars and ninety-six cents, (70 96;) that the libellants' cost, taxed and allowed in said libel in the circuit court, as accruing previous to the appeal to the Supreme Court of the United States, amounted to the sum of three hundred and three dollars and fifteen cents, (303 15;) that the decree of said circuit court in said libel was affirmed on appeal by the Supreme Court of the United States, with costs and damages at the rate of six per cent. per annum, and with costs of said Supreme Court, as appears by the mandate of said Supreme Court, on file in said cause in said circuit court, and made part of this agreed statement of facts; that the costs of said Supreme Court taxed and allowed to the libellants, and included in the decree of said Supreme Court, amounted to the sum of one hundred and fifty dollars and fifty-two cents, (150 52.) That at the June term of said circuit court, 1848, and on the 19th day of said June, upon the mandate of said Supreme Court, a decree was passed by said circuit court against said New Jersey Steam Navigation Company, in favor of said Merchants' Bank in said cause, for the sum of $33,204 00, being the prin-

cip[illegible]
per cent.
Court, mak[illegible]
cuit court at former [illegible]
district court, amounting [illegible]
of $28,982 76, for which [illegible] favor of said Mer-
chants' Bank against said New Jersey Steam Navigation Company by said circuit court, exclusive of seventy-five cents more for said execution; that said execution was levied on the said company's steamer, the Massachusetts, attached on the original process in said cause, and that under said levy said steamer was, on the 26th day of July, 1848, sold to the highest bidder at public auction for the sum of $25,000, which said sum has been received by said Merchants' Bank as the proceeds of said sale, deducting therefrom the sum of $883 38, being the costs and expenses on said execution, so that the nett sum received by the said Merchants' Bank of said New Jersey Steam Navigation Company, by the sale of the steamer Massachusetts, on execution in said suit, amounts to the sum of $24,116 62.

It is agreed that the respondents have no property within the district of Rhode Island on which the execution can be levied for the balance due thereon; also that the defendant has been requested to pay the balance due on the execution, and has refused so to do. The execution and the receipts thereon are a part of the statement of facts.

It is also agreed that the respondents are a corporation, incorporated by the Legislature of New Jersey, and that none of the officers or agents of the corporation reside within this district.

It is also agreed, that the defendant was, at the time the steamer Massachusetts was attached, and at the time the appeal bond was given, a stockholder in the New Jersey Steam Navigation Company. Judgment to be entered for the plaintiff for such sum as the court upon the above statement of facts is of opinion the plaintiff is entitled to recover; and if in the opinion of the court, the plaintiff is not entitled to recover, then judgment to be for defendants.

Execution referred to in the agreed statement of facts.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to the marshal of said district, or to his deputy, greeting:

[SEAL.]

Whereas the President, Directors, and Company of the Merchants' Bank of Boston, a corporation incorporated by the Legislature of the Commonwealth of Massachusetts, by the consideration of the circuit court of the United States, holden at Newport, within and for Rhode Island district, on the 15th day of June, anno domini, 1848, recovered judgment against the New Jersey Steam Navigation Company, a corporation incorporated by the Legislature of the State of New Jersey, owners

...ght
..., and six
...suit, as appears of
...to be done. We com-
...mand ... that of the goods and chattels of the
...51 said New Jersey Steam Navigation Co., within your district, you cause to be levied and paid unto the said President, Directors, and Company of the Merchants' Bank, the aforesaid sums, being twenty-eight thousand nine hundred and eighty-two and $\frac{75}{100}$ dollars in the whole, with seventy-five cents more for this writ, together with interest on said debt from the 19th day of June, 1848, until the whole is paid, and thereof to satisfy yourself for your own fees. Hereof fail not, and make true return of this writ and your doings thereon to our next circuit court, to be holden at Providence, within and for our district of Rhode Island, on the fifteenth day of November next.

Witness honorable Roger B. Taney, our chief justice, at Providence, this twenty-sixth day of June, in the year eighteen hundred and forty-eight.

JOHN T. PITMAN, *Clerk.*

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island district, ss.

Providence, July 6th, 1848.

I have this day, at 10 o'clock, a. m., levied this execution on the steamboat Massachusetts, together with her tackle, apparel, furniture, and boats, as the property of the New Jersey Steam Navigation Company, and have advertised the same to be sold on the 26th day of July, at 12 o'clock, m., and have advertised the time and place of sale in the following newspapers: Daily Journal & Republican Herald, Providence; Journal of Commerce, Courier & Enquirer, New York; Atlas, Boston Post, Boston; Eastern Argus, Portland; Advertiser, Portland; and one New Haven paper.

On the 26th inst., sold to Edward C. Wickes, who was the highest bidder, for twenty-five thousand dollars, and the sale of the boat was adjourned until to-morrow, the 27th, same hour, for the purpose of giving time to complete the conditions of sale; on the 27th adjourned the sale until the 28th, same time and place; and on the 28th, further adjourned the sale until the 29th day of July, same hour.

B. ANTHONY,
U. S. Marshal.

Received, July 26th 1848, of Burrington Anthony, U. S. marshal, seven thousand three hundred and thirty-three dollars and thirty-three cents, on the within execution.

$7,333 33.

R. W. GREENE,
Att'y to the Merchants' Bank of Boston.

dred and
amount collected
and eighty-three dollars
marshal's charges and
sum of one hundred and
in the same manner and to the same purpose as the two notes receipted for by the within receipt, dated August 1st, 1848.

R. W. GREENE,
Att'y to Merchants' Bank.

Received, August 1st, 1848, of B. Anthony, esq., marshal, two notes of hand, both signed by Edward Wickes, and endorsed by Drew, Robinson & Co., both dated July 26th, 1848, each for the sum of eight thousand three hundred and thirty-three dollars and thirty-three cents, one payable in sixty days and the other in ninety days from the date thereof, with interest. The above notes received on account of the sum of twenty-two thousand two hundred and twenty-four dollars, mentioned in the decree on which said execution issued; said sum of twenty-two thousand two hundred and twenty-four dollars being a part of the sum for which said decree was rendered; not intending hereby in any way to discharge the obligor on the appeal bond given on the appeal from the U. S. circuit court to the Supreme Court of the United States in this case, from his liability for the full amount of the penalty of said bond and interest.

R. W. GREENE,
Att'y to Merchants' Bank.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

PROVIDENCE, *August 4th*, 1848.

I return this execution satisfied for twenty-four thousand one hundred and sixteen $\frac{44}{100}$ dollars, and unsatisfied for the balance; there being no other goods or chattels belonging to the New Jersey Steam Navigation Company to be found by me in my district.

BURRINGTON ANTHONY,
U. S. Marshal, R. I. district.

Judgment.

And this case being continued to the June term, is now on hearing before the court, upon the pleadings and agreed statement of facts aforesaid, the presiding judge not sitting in the case, he being a stockholder in said bank, having invested in it funds of some of his family.

Whereupon it was considered by the court here, that the plaintiff have and recover of the defendant the sum of twenty-six hundred and

And whereupon at said term the said defendant, by his attorney, prayed an appeal from the judgment aforesaid, made by the court in the premises, to the Supreme Court of the United States, which was granted, he filing in court the following appeal bond, to wit:

Appeal bond.

Know all men by these presents, that we, Moses B. Ives as principal, and William Comstock as surety, both of the city and county of Providence, in the State of Rhode Island, &c., are held and firmly bound unto the President, Directors, and Company of the Merchants' Bank, a corporation duly and legally incorporated by the general court of the Commonwealth of Massachusetts, and located and transacting business in the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in the sum of four thousand dollars, to be paid to the said Merchants' Bank, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, and assigns, jointly and severally, by these presents.

The condition of the above obligation is as follows: Whereas, at the June term of the circuit [court] of the United States, for the first circuit, begun and holden at Newport, within and for the Rhode Island district, on the 15th day of June, A. D. 1849, a final judgment was rendered and pronounced by said court, in a cause in said court pending, wherein the said Merchants' Bank of Boston, in the Commonwealth of Massachusetts, were complainants, and Moses B. Ives, of the city and county of Providence and district of Rhode Island, is respondent; from which judgment the said Moses B. Ives has appealed to the Supreme Court of the United States, next to be holden at Washington, on the first Monday in December next. Now, therefore, if the said Moses B. Ives shall prosecute his said appeal before said *appeal before said* Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages as shall be adjudged for him to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect. Sealed with our seals, and dated this fifth day of October, A. D. eighteen hundred and forty-nine.

MOSES B. IVES, [SEAL.]
WILLIAM COMSTOCK. [SEAL.]

Signed, sealed, and delivered in presence of—
SAMUEL AMES.

Filed and approved October 5th, 1849.
[REC. CCXVIII, D. T. 1849.]—3